



File Code: 1570

Date: September 28, 2012

Route To:

Subject: Appeal Decision for Kisatchie National Forest Plan Amendment #9 Prohibiting  
Dog-Deer Hunting

To: Regional Forester, R-8

This is my decision on the appeals of the Environmental Assessment (EA) and Decision Notice (DN) & Finding of No Significant Impact (FONSI) for the Kisatchie National Forest (KNF) Plan Amendment #9 Prohibiting Dog-Deer Hunting. Your decision for this management direction was subject to appeal under the optional appeal procedures available during the transition between planning regulations, as provided for at Title 36, Code of Federal Regulations (CFR), Part 219, Appendix A to Section 219.35. My review was conducted pursuant to the appeal procedures formerly codified at 36 CFR 217 and now found at [http://www.fs.fed.us/appeals/appeals\\_related.php#app\\_work](http://www.fs.fed.us/appeals/appeals_related.php#app_work).

A total of 1,109 appeals were submitted under the appeal procedures. Of these appeals, 30 were dismissed from further review for being filed after the close of the appeal filing period. Another 19 were dismissed for not providing contact information such as a phone number, postal address, or email address. All appeals of the DN that were accepted for review have been consolidated into one set of issues and one decision is being rendered. The issues were sufficiently similar to allow consolidation (appeal procedures, section 13(b)).

You transmitted the appeal record to the Chief in conformance with the appeal procedures at Section 15(a).

## **Kisatchie National Forest Plan Amendment #9 Prohibiting Dog-Deer Hunting**

On February 29, 2012, you signed the DN & FONSI amending the Revised Land and Resource Management Plan for the Kisatchie National Forest. This non-significant amendment adds a new standard that prohibits the use of dogs to hunt deer on the entire Kisatchie National Forest. You completed the amendment under the direction of the planning regulations at 36 CFR 219, as published in the *Federal Register* on December 18, 2009. Section 219.35 and Appendix B to Section 219.35 provided you the option of completing this plan amendment using the provisions of the planning regulations promulgated in 1982. This is the option you chose. Those 1982 planning regulations were last published in the Code of Federal Regulations (CFR) on July 1, 2000, and can be found at <http://www.fs.fed.us/emc/nfma/includes/nfmareg.html>.

## **Issues**

Of the 1,109 appeals, 1,105 were one page form appeals presenting identical issues. These form appeals and three of the unique appeals were found to be sufficiently comprehensive to allow a meaningful review and response. For the purposes of discussing the appeals, the 1,105 one page



form appeals are being treated as one appeal, resulting in four appeals total that were reviewed. The sentiment conveyed in these appeals fully reflects the contentions raised in the form and other appeals; thus, we believe the responses to the specific issues raised in these appeals sufficiently respond to all the others. The appeal reference numbers are abbreviated throughout this decision document by the last four digits of the tracking number for the notice of appeal (NOA). A listing of the four appeals reviewed in detail and their associated tracking numbers are as follows:

12-13-00-0001 – Mr. Bobby G. Marcellus (representative of appeals 12-13-00-0001 through 0938, 0940 through 1074, and 1078 through 1109)

12-13-00-0939 – Northwest Louisiana Fox Hunters Association

12-13-00-1075 – Louisiana Sportsmen Alliance, LLC

12-13-00-1076 – Mississippi Hunting Dog Association, Inc.

Appeal number 12-13-1077, submitted by the Bayou State Dog Hunters Association, Inc, was originally identified as a unique appeal. However, this appellant adopted the appeal filed by the Louisiana Sportsmen Alliance (NOA #1075), and thus their appeal issues were addressed by responding to the issues raised in NOA #1075.

All appellants will receive notification of my decision. This final appeal decision is also available on the Web at <http://www.fs.fed.us/appeals/> or in hard copy, upon request.

This appeal decision is the outcome of a deliberative and extensive review process. Although not every contention made in the appeals is cited in the same order or format in this decision, all appellants' concerns have been considered. My appeal review focused mainly on compliance of the EA and the DN & FONSI with applicable law, regulation, and policy as cited by appellants or as determined through the Agency's review of the appeals. I also reviewed issues of fact.

Issues and contentions raised in the appeals allege or pertain to violations of the Administrative Procedure Act (APA), the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), agency Fish and Wildlife regulations, and various directives from the 2300 and 2600 chapters of the Forest Service Manual. Several issues of fact were also raised. Where an appeal issue did not specifically allege a violation of law, regulation, or policy; raise an issue of fact with supporting rationale; and could not be reasonably construed to reflect an allegation of a violation, it was noted but not given a direct response.

## Appeal Decision

Based on my review of the appeal record regarding the issues raised on appeal, I am affirming the Regional Forester's decision with the instructions contained in Attachment 1. This decision will not be implemented until the instructions are completed.

The instructions pertain to issues raised related to the FONSI, maps, data on dog-deer hunting violations, the number of dog-deer hunters, and conclusions made about user conflict based on new technology. I find that the FONSI in the new decision fails to meet the content requirements of 40 CFR 1508.27 and FSH 1909.15 section 43.1 by not disclosing consideration of context in making the finding. I instruct you to correct the DN and FONSI so that it meets the regulations. I also instruct you to correct the map in Figure 7 on page 56 of the EA.

Related to dog-deer hunting violations, I find the EA violates 40 CFR 1502.24 because the information in the EA and appeal record does not clearly show which violations are directly attributed to dog-deer hunters. While you state that some information is unavailable, the EA must also include a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable adverse impacts on the human environment. The environmental analysis document and project record must provide information regarding violations that were committed directly by dog-deer hunters during the dog-deer hunting season or fully fulfill the requirements of 40 CFR 1502.22.

After reviewing the appellant's contentions regarding the number of dog-deer hunters, I find it is unclear why you chose to use two different numbers rather than just one set of data. This is not to say that you were incorrect in using two numbers; however, the environmental analysis document should explain why you chose to use the numbers that you did.

The DN (p. 4) concludes that the use of modern technology in dog-deer hunting can lead to more interference with other users. I find that the DN, EA, and appeal record do not provide information to support this conclusion, as required by 40 CFR 1502.24. I instruct you to provide information to support the conclusion or remove this conclusion from the environmental analysis documents.

This decision is the final administrative determination of the Department of Agriculture unless the Secretary, on his own initiative, elects to review the decision within 15 days of receipt (appeal procedures, section 17(d)).

*/s/ James M. Pena*

JAMES M. PENA

Reviewing Officer for the Chief

cc: Appellants

Region 8 Appeals

